

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

VIACOM INTERNATIONAL, INC., COMEDY )	)	
PARTNERS, COUNTRY MUSIC. )	)	
TELEVISION, INC., PARAMOUNT )	)	
PICTURES CORPORATION, and BLACK )	)	
ENTERTAINMENT TELEVISION, LLC, )	)	
	)	
Plaintiffs, )	)	
	)	
vs. )	)	NO. 07-CV-2203
	)	
YOUTUBE, INC., YOUTUBE, LLC, )	)	
and GOOGLE, INC., )	)	
	)	
Defendants. )	)	
	)	
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	)	
THE FOOTBALL ASSOCIATION PREMIER )	)	
LEAGUE LIMITED, BOURNE CO., et al., )	)	
on behalf of themselves and all )	)	
others similarly situated, )	)	
	)	
Plaintiffs, )	)	
	)	
vs. )	)	NO. 07-CV-3582
	)	
YOUTUBE, INC., YOUTUBE, LLC, and )	)	
GOOGLE, INC., )	)	
	)	
Defendants. )	)	
	)	
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VIDEOTAPED DEPOSITION OF BRENT HURLEY  
SAN FRANCISCO, CALIFORNIA  
TUESDAY, AUGUST 26, 2008

BY: ANDREA M. IGNACIO HOWARD, CSR, RPR, CLR  
CSR LICENSE NO. 9830  
JOB NO. 15688

1                                   AUGUST 26, 2008

2                                   11:02 a.m.

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4                   VIDEOTAPED DEPOSITION OF BRENT HURLEY

5                   SHEARMAN & STERLING, 525 Market Street,

6                   San Francisco, California, pursuant to notice,

7                   before ANDREA M. IGNACIO HOWARD, CLR, RPR, CSR

8                   License No. 9830.

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A P P E A R A N C E S:

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A P P E A R A N C E S (Continued.)

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KEN REESER, Videographer.

---oOo---

HURLEY

11:06:55 2005 --

11:06:56 A That's correct.

11:06:57 Q -- correct?

11:06:57 What was your personal net worth when you  
11:07:00 left Fisher Investments in July 2005?

11:07:08 A I don't recall specifically, but given the  
11:07:14 college student loans I still had, I was underwater.

11:07:19 Q And then you took a position at YouTube in  
11:07:23 August 2005; is that correct?

11:07:24 A That's correct.

11:07:24 Q And your title was director of finance and  
11:07:28 operations; is that correct?

11:07:31 A Yeah. Initially I didn't have a title --

11:07:33 Q I see.

11:07:34 A -- but --

11:07:34 Q But eventually it became --

11:07:36 A -- that's what it became, yeah.

11:07:37 Q Okay. And what's your present personal net  
11:07:39 worth?

11:07:42 A It's a few million.

11:07:47 Q A few million.

11:07:48 More than 5 million?

11:07:50 A Yes.

11:07:50 Q Okay. More than 10 million?

HURLEY

11:30:57 could explain why that would be?

11:30:59 A Well, as I said, I produced some of the

11:31:02 slides to compose the board reports. It was a

11:31:05 collaboration effort, and once I e-mailed the board

11:31:09 reports, there were no -- the slides for the board

11:31:13 reports , they were really of no use to me. We were

11:31:18 on to the next month, and so if I made -- I would

11:31:27 delete them. I don't know. It's possible.

11:31:33 Q Okay. Now, there was a period of time prior

11:31:40 to the acquisition when you were the person

11:31:43 responsible for finances at YouTube; correct?

11:31:46 A That's right.

11:31:46 Q And I take it that as part of your duties,

11:31:52 you prepared financial projections; is that correct?

11:31:56 A That's correct.

11:31:56 Q And did you prepare those on your office

11:32:02 laptop?

11:32:03 A Uh-huh.

11:32:04 Q And where did you store those?

11:32:08 A Just on the --

11:32:09 MR. INGBER: Objection; assumes facts not in

11:32:12 evidence.

11:32:13 THE WITNESS: Huh?

11:32:13 MR. INGBER: Go ahead. You can answer.

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HURLEY

11:32:15 MR. VERRILLI: Q. Where did you store those?

11:32:16 A On the laptop.

11:32:17 Q On the laptop?

11:32:18 A Uh-huh.

11:32:18 Q Okay. Anywhere else?

11:32:21 A They were sent through e-mail, but they

11:32:24 weren't stored. We didn't have a server, a company

11:32:27 server.

11:32:28 Q And financial projections, I take it, then

11:32:32 were not developed on the Wiki?

11:32:37 A No.

11:32:37 Q Okay. So is it possible then that you

11:32:45 deleted financial projections that you had prepared on

11:32:48 your office laptop?

11:32:51 MR. INGBER: At any time?

11:32:54 MR. VERRILLI: Yeah.

11:32:54 Q At any time while -- prior to the

11:32:58 acquisition.

11:32:59 A It's possible, but it's more likely that the

11:33:02 model evolved over time as the company grew, so it

11:33:06 wasn't that the first version was thrown out and let's

11:33:09 start with a new one. It was just that you just

11:33:12 refine as you get more data.

11:33:15 Q Did you keep hard copies of your financial

HURLEY

11:33:17 projections?

11:33:19 A There were excerpts that were included in

11:33:21 some of the board reports, but a spreadsheet is much

11:33:28 easier to use than a printout.

11:33:30 Q Right.

11:33:31 And I'm just trying to understand. You

11:33:34 didn't save the spreadsheets over time that you did?

11:33:38 A Of course I saved them.

11:33:42 Q Okay. And you saved them on your office

11:33:45 laptop?

11:33:45 MR. INGBER: Again, are we talking about

11:33:47 pre-acquisition?

11:33:47 MR. VERRILLI: Yes, just pre -- I'm sorry.

11:33:49 Pre-acquisition, yes.

11:33:51 THE WITNESS: I'm sorry. As far as saving,

11:33:54 do you mean the actual model that's being refined over

11:33:58 time, or snapshots of the model?

11:34:00 MR. VERRILLI: The snapshots of the model.

11:34:03 THE WITNESS: No, not necessarily.

11:34:05 MR. VERRILLI: Q. So you would erase the

11:34:08 financial projections that you made --

11:34:10 A No.

11:34:10 Q -- in January once you got to February or

11:34:15 March; is that what you're saying?



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HURLEY

11:34:15 A No, we would refine.

11:34:17 MR. INGBER: Objection; misstates the

11:34:18 witness's testimony.

11:34:19 THE WITNESS: We wouldn't erase. We would

11:34:21 refine. Again, as you get more data, we would add

11:34:25 that to the model.

11:34:25 MR. VERRILLI: Q. I just want to get

11:34:26 clarity, Mr. Hurley. You did not maintain a

11:34:30 historical projection of what your projections were at

11:34:33 various points in time?

11:34:34 A No, because the projections are refined over

11:34:37 time as you get data.

11:34:39 Q Sure.

11:34:40 But it wasn't relevant to you to know in June

11:34:44 how accurate your predictions in January had been?

11:34:49 A Not necessarily.

11:34:51 Q So you just erased them?

11:34:52 MR. INGBER: Objection; asked and answered.

11:34:54 THE WITNESS: We didn't erase. We refined

11:34:56 as we got more data.

11:34:58 MR. INGBER: Mischaracterizes the witness's

11:35:00 testimony.

11:35:00 THE WITNESS: We got better projections.

11:35:02 MR. VERRILLI: Right.

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HURLEY

11:35:02 Q And so you overwrote the old data?

11:35:04 MR. INGBER: Objection; asked and answered;

11:35:06 mischaracterizes the witness's testimony.

11:35:08 Go ahead.

11:35:09 THE WITNESS: Yeah. Again, we just refined

11:35:11 them and then tried to improve them.

11:35:12 MR. VERRILLI: Q. Well, would refining them,

11:35:16 as you are using that word, include overriding the

11:35:20 hold data in the spreadsheet?

11:35:26 A It's possible that -- well, of course when

11:35:29 you get more information, if you learn that one thing

11:35:32 is -- is wrong, and it's not accurate, then you remove

11:35:35 that from the model, and you add the new, better

11:35:38 information to give you a better forecast.

11:35:41 Q And you wouldn't save anywhere in any form

11:35:44 the old information?

11:35:48 MR. INGBER: Objection; asked and answered.

11:35:50 THE WITNESS: Yeah. You refine the model.

11:35:53 You get the better model. You don't keep the old

11:35:56 model around.

11:35:56 MR. VERRILLI: Q. When you created these

11:35:58 financial projections, did you make any backup copies?

11:36:03 MR. INGBER: Objection; vague.

11:36:04 THE WITNESS: Again, I saved it to my local

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HURLEY

11:36:12 machine.

11:36:13 MR. VERRILLI: Q. And were you working in

11:36:15 Microsoft Excel?

11:36:17 A Yeah.

11:36:18 Q And how frequently did you do financial

11:36:21 projections?

11:36:27 A I mean --

11:36:28 MR. INGBER: Again, just focusing

11:36:29 pre-acquisition?

11:36:29 MR. VERRILLI: Yes.

11:36:31 THE WITNESS: Okay. It was one of my many

11:36:35 duties. It depends what time, what time period. Over

11:36:42 time, I focused more and more on finance and

11:36:45 operations.

11:36:46 MR. VERRILLI: Q. Well --

11:36:47 A Again, it was -- over time, the model also

11:36:50 got better, so it was just continual refinements.

11:36:55 Q And starting in January 2006 through the

11:37:04 period of the acquisition by Google --

11:37:06 A Yes.

11:37:06 Q -- did you do financial projections on --

11:37:08 more frequently than once a month?

11:37:15 A Certainly once a month to -- for the board

11:37:18 reports and also to measure the -- the data that we

HURLEY

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2 11:37:21 got from the previous month to include that in the  
3 11:37:24 model.

4 11:37:24 Q So at least once a month?

5 11:37:32 A Yes.

6 11:37:32 Q You did them for the board reports?

7 11:37:35 A Yes.

8 11:37:35 Q And then I take it you did them also for  
9 11:37:39 other reasons in addition to the board reports?

10 11:37:43 MR. INGBER: Objection; assumes facts not in  
11 11:37:45 evidence.

12 11:37:45 THE WITNESS: We did it for the company to --  
13 11:37:52 I mean, to project where the -- how the site was  
14 11:37:58 growing --

15 11:37:58 MR. VERRILLI: Q. And --

16 11:37:59 A -- what the company was up to.

17 11:38:00 Q -- and you maintained no historical record of  
18 11:38:03 your projections from month to month? That's what  
19 11:38:06 you're testifying to?

20 11:38:07 MR. INGBER: Objection to form; asked and  
21 11:38:09 answered several times.

22 11:38:10 THE WITNESS: Yeah. Again, the model was  
23 11:38:14 refined, and each month we would measure the stocks,  
24 11:38:23 and then insert those as fact, and then the  
25 11:38:26 forward-looking projection we would refine over time.

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HURLEY

11:38:28           So the historic data was captured in that  
11:38:31 model. It was just that the model would continue to  
11:38:34 shape and evolve over time.

11:38:35           MR. VERRILLI: Okay.

11:38:40           Q   Mr. Hurley, can you explain to me how one  
11:38:45 would go about uploading a video clip onto YouTube?

11:38:51           A   Sure. Just --

11:38:52           MR. INGBER: Objection; vague as to time.

11:38:56           MR. VERRILLI: Well, let's -- okay. Let's  
11:38:58 make the time frame from the period between

11:39:02 January 1st, 2006, and the time of the acquisition.

11:39:05           During that time frame, can you explain to me  
11:39:08 how one would go about uploading a video clip onto  
11:39:12 YouTube?

11:39:12           A   Sure. I can give you the general work flow.

11:39:16           You create an account on YouTube. You verify  
11:39:22 your e-mail address for that account. You go to our  
11:39:26 upload screen, click the upload button, select the  
11:39:32 video file you want to upload, include the metadata  
11:39:39 fields that we ask for, a description, title, tags,  
11:39:44 category, and then hit upload.

11:39:48           Q   And that's all it takes to upload?

11:39:51           A   Generally, yeah, pretty much.

11:39:52           Q   And did you ever upload videos to YouTube

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HURLEY

12:13:29 plan for a start-up is hardly planned, because things  
12:13:33 change so quickly. It's more reactive.

12:13:35 MR. VERRILLI: Q. Well, you had a business  
12:13:38 model at least that you were pursuing; right?

12:13:41 A Again, the models at that time were so -- it  
12:13:47 was just, again, best guesses and they were just  
12:13:50 guesses.

12:13:52 Q Well, you -- one possibility was to pursue an  
12:14:02 advertising based business model; correct?

12:14:04 A Yes.

12:14:04 Q Do you have any others?

12:14:12 A That was the primary. I don't recall any  
12:14:15 other specific plans.

12:14:16 Q So the only one you can recall is an  
12:14:20 advertising based business model?

12:14:22 A Well, first and foremost we were focused on  
12:14:25 creating a great user experience, so it's very  
12:14:29 secondary. That may sound odd creating a business and  
12:14:34 not worrying about first and foremost money, but that  
12:14:39 was the case. I mean, we were really trying to build  
12:14:43 a great experience for the user.

12:14:44 Q And you didn't care about the money?

12:14:47 A Not in -- initially, no.

12:14:49 Q When did you start caring about the money?

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HURLEY

12:14:51 MR. INGBER: Objection to form.

12:14:52 THE WITNESS: Well, it could be viewed that

12:14:58 we -- we are now just starting to focus on money.

12:15:03 Even after the acquisition, Google allowed us to

12:15:07 continue to focus on the user and to create a great

12:15:10 user experience.

12:15:11 MR. VERRILLI: Q. Well, your brother was

12:15:12 focused on the money in that e-mail on August 17th,

12:15:16 2005; wasn't he?

12:15:17 A No; he was focused on a successful company.

12:15:19 Q "A multi-billion dollar success" is what it

12:15:23 said; right?

12:15:23 MR. INGBER: Objection; asked and answered,

12:15:25 Don.

12:15:26 THE WITNESS: Creating a great product that

12:15:28 leads to success.

12:15:29 MR. VERRILLI: Q. And as far as you know, in

12:15:40 2005, no one employed at YouTube was thinking about

12:15:45 getting acquired?

12:15:46 A In -- at what time period?

12:15:48 Q In 2005.

12:15:50 A No.

12:15:54 Q So it would surprise you to learn --

12:15:56 A Not to my knowledge.

HURLEY

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2 12:15:56 Q -- so it would surprise you to learn that  
3 12:15:58 your brother was actually communicating with other  
4 12:16:00 YouTube employees in 2005 about getting acquired?

5 12:16:03 MR. INGBER: Objection to form.

6 12:16:05 He testified that the answer was no, not to  
7 12:16:08 his knowledge.

8 12:16:08 MR. VERRILLI: So I asked him whether he'd be  
9 12:16:11 surprised if that were the case.

10 12:16:14 THE WITNESS: Again, we had a -- a similar  
11 12:16:17 vision of focusing on the users and creating a great  
12 12:16:20 product. Anything like that, the money, any kind of  
13 12:16:26 acquisition was very secondary and not at the  
14 12:16:32 forefront of our thinking.

15 12:16:32 MR. VERRILLI: Okay.

16 12:16:35 Q Well, this -- we're talking about the  
17 12:16:41 advertising based business model.

18 12:16:44 A Uh-huh.

19 12:16:44 Q Describe to me what an advertising based  
20 12:16:47 business model is as you understand it.

21 12:16:52 A As I understand it, similar websites, you get  
22 12:17:00 traffic, people come to you, the site, and then you  
23 12:17:03 can insert ads onto those pages and -- and earn  
24 12:17:07 revenue from those ads.

25 12:17:09 Q So one goal of an advertising based business



HURLEY

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2 12:17:13 model is to build up a large community of users of the  
3 12:17:18 website; right?

4 12:17:23 A Yeah.

5 12:17:24 Q Okay. And another goal in an advertising  
6 12:17:29 based business model is to entice advertisers to place  
7 12:17:36 ads on the website in order to earn revenue; right?

8 12:17:44 A That's one way. It's not necessarily the  
9 12:17:47 way, and that's not the way we initially had it.

10 12:17:49 Q Okay. What -- how did you initially have it?

11 12:17:52 A Just with the various ad networks online that  
12 12:17:56 you can employ. It's not that you have a direct sales  
13 12:17:59 force selling ads for your site. They just auto  
14 12:18:02 insert those ads.

15 12:18:03 Q But you did have a sales force selling ads  
16 12:18:06 for your site by the second quarter of 2006; correct?

17 12:18:09 A That's right.

18 12:18:09 Q And you had planned well before the second  
19 12:18:12 quarter of 2006 to have a sales force selling ads  
20 12:18:16 directly by the second quarter of 2006; correct?

21 12:18:19 MR. INGBER: Objection to form; vague and  
22 12:18:20 ambiguous.

23 12:18:22 What do you mean by "well before"?

24 12:18:25 THE WITNESS: Yeah, I don't recall  
25 12:18:26 specifically when we planned that, to add a sales

HURLEY

12:18:33 force.

12:18:34 MR. VERRILLI: Q. You don't recall?

12:18:36 A No. Initially it was a -- it -- it would --

12:18:42 it would be easier for us if we didn't have a sales

12:18:45 force, if we could just use the ad networks that would

12:18:49 automatically do things on their own.

12:18:53 Q So going back to Exhibit 1, your resume, one

12:18:57 thing that it says is that you prepared and delivered

12:19:00 due diligence for the following transactions, and one

12:19:03 of them is Series A and B financing; do you see that

12:19:06 there?

12:19:07 A Uh-huh.

12:19:07 Q That was with Sequoia; correct?

12:19:10 A That's right.

12:19:10 Q And then it says "Equipment loan and lease";

12:19:13 do you see that?

12:19:14 A That's right.

12:19:14 Q That was with Triple Point; correct?

12:19:16 A That's right.

12:19:16 Q You don't recall making representations to

12:19:19 Triple Point that you had plans to have a direct

12:19:21 advertising sales force in the field in advance of the

12:19:25 second quarter of 2006?

12:19:28 A I don't remember specifically. Again, I

HURLEY

12:29:31 reviewing the videos before they were uploaded?

12:29:34 A Not before. They would immediately go live

12:29:38 to the site, and that was actually one of the reasons

12:29:43 that we introduced the community flagging, is that

12:29:48 they may upload -- I would go to bed at night. I was

12:29:51 the only guy doing this. Somebody may upload a video

12:29:54 in the middle of the night that was inappropriate, and

12:29:56 then in the morning this video may show up on one of

12:30:00 the most viewed pages, but there wasn't an easy way to

12:30:04 -- I would have to work through all the way back until

12:30:06 the middle of the night to be able to find that and

12:30:08 take that video down.

12:30:12 So the community flagging was an ability for

12:30:15 people to flag it and that it would automatically go

12:30:18 into a queue.

12:30:21 Q But you -- you were reviewing -- I just want

12:30:24 to get the facts clear. Until the end of

12:30:28 November 2005 you were reviewing every video that was

12:30:34 unloaded onto the site?

12:30:35 A Well, it depends. Reviewing, I would look at

12:30:38 thumbnails of videos. I wasn't actually watching

12:30:41 videos. It was -- it would be impossible to do that.

12:30:44 Q Did you review a thumbnail of every video

12:30:47 that was uploaded to the site?

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HURLEY

12:30:52 A Yeah, I would do my best. I was the only one  
12:30:54 doing it.

12:30:55 Q It must have been an -- must have been a real  
12:30:57 job, but -- but I just want to get clear.

12:31:02 That's what you were attempting to do, was to  
12:31:03 review a thumbnail of every video uploaded to the  
12:31:07 site?

12:31:07 A It was very ad hoc. Again, just looking at  
12:31:10 thumbnails, and if I saw some bare flesh, then I would  
12:31:14 remove it, but outside of sort of spotting porn,  
12:31:18 trying to catch other kind of inappropriate videos was  
12:31:21 very difficult to do. They would go through if they  
12:31:25 were, you know, violence videos, stuff like that.

12:31:31 You can't see that with just a thumbnail, so  
12:31:33 it would go live. Again, that's why we started  
12:31:37 building these tools so that the community could help  
12:31:39 police it.

12:31:40 So we looked to other sites, similar to  
12:31:44 online sites, like Craigslist and sort of these open  
12:31:48 forums and what they had done is sort of best  
12:31:50 practices to -- to rely on the community to be able to  
12:31:55 help keep -- keep the community itself safe.

12:31:58 Q Did you look at Google Video's practices as a  
12:32:01 model?

HURLEY

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2 12:47:21 Q You've just been handed a document,  
3 12:47:24 Mr. Hurley. It's been marked Exhibit 7.  
4 12:47:27 Could you take a look at it, please.  
5 12:47:29 A Uh-huh. Okay.  
6 12:48:06 Q This is an e-mail from you; is that correct?  
7 12:48:14 A That's correct.  
8 12:48:14 Q And it was sent on the 24th of November 2005;  
9 12:48:20 correct?  
10 12:48:21 A Yes.  
11 12:48:21 Q And --  
12 12:48:23 MR. INGBER: Just for the record, there's  
13 12:48:24 actually two e-mails in this chain.  
14 12:48:26 MR. VERRILLI: Thank you. The e-mail at the  
15 12:48:28 top half of the page is the one we're referring to.  
16 12:48:31 Q You understand that, Mr. Hurley; right?  
17 12:48:34 A Yes.  
18 12:48:34 Q And the -- the -- the e-mail was sent on the  
19 12:48:40 24th of November; correct?  
20 12:48:42 A Yeah.  
21 12:48:43 Q That was the day before the Thanksgiving  
22 12:48:45 holiday; right?  
23 12:48:46 A Yes, yeah.  
24 12:48:47 Q Right.  
25 12:48:49 And you are sending a message here to other

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HURLEY

12:48:57 YouTube employees who are going to help you review  
12:49:01 videos over the holiday weekend; correct?

12:49:03 A That's correct.

12:49:03 Q Okay. And you're giving them instructions  
12:49:06 about what to do; correct?

12:49:08 A Yes.

12:49:08 Q Okay. And one of the instructions you give  
12:49:16 them says "As far as copyright stuff is concerned, be  
12:49:20 on the lookout for Family Guy, South Park and  
12:49:25 full-length anime episodes."

12:49:29 Do I have that pronunciation correct by the  
12:49:31 way?

12:49:31 A Sure. I don't know. Anime.

12:49:36 Q But that's one of the instructions you gave  
12:49:38 to the reviewers; right?

12:49:42 A Yes.

12:49:42 Q And so when a reviewer found a Family Guy  
12:49:49 episode, what was the reviewer supposed to do?

12:49:53 A I assume try to take it down.

12:49:58 Q And when the reviewer found a South Park  
12:50:01 episode, what was the reviewer supposed to do?

12:50:04 A Try to take it down.

12:50:05 Q And when the reviewer found a full-length  
12:50:09 anime episode, what was the reviewer supposed to do?

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HURLEY

12:50:13 A Try to take it down.

12:50:14 Q Okay. But it was -- but the instruction goes  
12:50:17 on to say that "music videos and news programs are  
12:50:21 fine to approve"; right?

12:50:25 A Uh-huh.

12:50:25 MR. INGBER: Give an audible response.

12:50:27 THE WITNESS: Yes.

12:50:32 MR. VERRILLI: Q. Can I ask you to go back  
12:50:35 and look at Exhibit 2, please. Let me know when  
12:50:51 you're ready.

12:50:52 A Okay.

12:51:00 Q Are you ready?

12:51:01 A Yeah, I'm ready.

12:51:02 Q Okay. So this is an e-mail that you sent  
12:51:04 approximately a month and a half earlier; correct?

12:51:07 A That's correct.

12:51:08 Q Okay. And the subject is "Admin  
12:51:12 Improvements"; correct?

12:51:14 A That's right.

12:51:14 Q What does "Admin" mean?

12:51:18 A That was the review where the queue of videos  
12:51:24 when we would look at the thumbnails would be.

12:51:27 Q Okay. Can you go down to this number four  
12:51:32 here? You see it --

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HURLEY

14:36:26 you were involved in the review process, you never  
14:36:29 relied exclusively on the community flagging to  
14:36:32 prevent pornography from appearing on the site;  
14:36:37 correct?

14:36:38 MR. INGBER: Objection to form.

14:36:39 THE WITNESS: I think as I had said before,  
14:36:41 we didn't have community flagging at the outset, so of  
14:36:46 course we were just trying, ad hoc, trying to control  
14:36:51 the site.

14:36:52 MR. VERRILLI: Q. But you continued when --  
14:36:57 during the time when you were involved in review,  
14:37:00 YouTube continued to review proactively for  
14:37:04 pornography even after you had the community flagging  
14:37:07 system in place; correct?

14:37:12 A Not to my knowledge.

14:37:16 Is this after I stopped doing any kind of  
14:37:18 reviews?

14:37:19 Q When you were doing it.

14:37:20 A When I was doing it?

14:37:22 Q When you were doing it.

14:37:27 A Not to my knowledge. I know we stopped  
14:37:30 reviewing all videos, and we had introduced a flag and  
14:37:36 reviewed the flag videos.

14:37:38 Q And did YouTube ever implement the flagging



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HURLEY

15:17:58 MR. INGBER: Hold on. I don't want you to  
15:18:00 guess.

15:18:00 THE WITNESS: Oh, sorry. Yeah. Yeah, I'm  
15:18:04 not sure. It may or might -- may not actually be part  
15:18:08 of private videos.

15:18:10 MR. VERRILLI: Q. The fact is that YouTube  
15:18:15 proactively reviewed every private video uploaded to  
15:18:18 make sure there was no inappropriate content; correct?

15:18:20 MR. INGBER: Objection; vague as to time.

15:18:24 THE WITNESS: Initially we reviewed any  
15:18:26 video.

15:18:26 MR. VERRILLI: Q. And after YouTube stopped  
15:18:28 reviewing any video, it continued to review all  
15:18:31 private videos uploaded to ensure there was no  
15:18:34 inappropriate content; correct?

15:18:39 A Again, I'm not sure as far as timing. I  
15:18:43 transitioned those duties over to Heather and the  
15:18:46 other team members.

15:18:49 Q But you created a document that specifically  
15:18:51 says that all private videos will be screened for  
15:18:54 inappropriate content; didn't you?

15:18:56 MR. INGBER: Objection.

15:18:57 Show him the document if you feel it will  
15:19:02 refresh his recollection.

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HURLEY

15:34:05 I'm not -- I'm not surprised. It's just that I don't  
15:34:11 specifically remember doing it.

15:34:12 MR. VERRILLI: Q. You don't have any reason  
15:34:13 to think that this is incorrect; do you?

15:34:16 A No.

15:34:20 Q Okay. Could we give the witness Exhibit 14,  
15:34:24 please.

15:34:39 Here you go. 14.

15:34:42 MR. INGBER: Is this the document with the  
15:34:43 subject line "Board Preso"?

15:34:49 MR. VERRILLI: No, I'm sorry. I got ahead of  
15:34:51 myself.

15:34:51 MR. INGBER: I think we're going on to 14 and  
15:34:53 heading to 17 if you're marking a new 16?

15:34:57 MR. VERRILLI: No, I think I jumped ahead,  
15:35:00 because I premarked this. That's what I think is  
15:35:03 causing the confusion here. I think we are at 15.

15:35:05 MR. INGBER: Yeah, you're right.

15:35:06 MR. VERRILLI: And this document is 14. It's  
15:35:08 a document, the tag line says "June Results." Okay.  
15:35:12 It's my -- I'm the source of that confusion.

15:35:22 MR. INGBER: This is 14.

15:35:44 Don, which -- what's the Bates number on the  
15:35:46 document that you've labeled Exhibit 13?

HURLEY

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2 15:35:49 MR. VERRILLI: Exhibit 13?  
3 15:35:50 MR. INGBER: Yes.  
4 15:35:51 MR. VERRILLI: Exhibit 13 is the "Board  
5 15:35:55 Preso."  
6 15:35:56 MR. INGBER: Okay.  
7 15:35:56 MR. VERRILLI: It's 00762173.  
8 15:36:03 MR. INGBER: Okay. Got it.  
9 15:36:05 MR. VERRILLI: Okay.  
10 15:36:06 Q Mr. Hurley, have you had a chance to review  
11 15:36:08 this document?  
12 15:36:09 A Yes.  
13 15:36:09 Q And the first page of this document is an  
14 15:36:13 e-mail, and it's from you to another person at  
15 15:36:17 YouTube; correct?  
16 15:36:18 A Uh-huh, that's right.  
17 15:36:19 Q And it's dated June -- forgive me, and it's  
18 15:36:23 dated August 18th, 2006; correct?  
19 15:36:29 A August 18th, yeah.  
20 15:36:30 Q Okay. And it attaches -- it has an  
21 15:36:35 attachment; correct?  
22 15:36:36 A That's correct.  
23 15:36:36 Q And did you prepare this attachment?  
24 15:36:39 A Yes.  
25 15:36:39 Q Okay. And you're familiar with it?

HURLEY

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2 15:36:42 A Yes.

3 15:36:42 Q Okay. I just want you to explain some things

4 15:36:49 to me about this document, and I'm going to ask if we

5 15:36:52 could start on Bates numbered page 0073364.

6 15:37:09 A Okay.

7 15:37:10 Q There is a column to the left that says

8 15:37:12 "date"; right?

9 15:37:13 A Yeah.

10 15:37:14 Q Is that the date on which the particular

11 15:37:16 advertisement ran?

12 15:37:17 A Yes.

13 15:37:17 Q Okay. And the next column says "Channel";

14 15:37:21 right?

15 15:37:22 A Yeah.

16 15:37:22 Q What does that mean?

17 15:37:24 A Just the ad unit on the site depending on

18 15:37:32 which page it was on.

19 15:37:33 Q Okay. So let me just ask some questions so I

20 15:37:35 can get clarification as to what this means.

21 15:37:37 For example, on 6/1/2006 it says "Channel

22 15:37:43 Watch Top." Does that mean the advertisement appeared

23 15:37:46 at the top of the watch page?

24 15:37:48 A Yes.

25 15:37:48 Q Okay. And the next one, 6/1/2006, says

HURLEY

15:37:52 "Results Top." Does that mean that the advertisement  
15:37:55 appeared at the top of the results page?

15:37:57 A The top of the search results page, I  
15:37:59 believe.

15:37:59 Q Okay. I'm just trying to understand what --  
15:38:02 what you meant by the words you used here.

15:38:04 A Uh-huh.

15:38:04 Q That's what it means --

15:38:06 A Yeah.

15:38:06 Q -- search results page?

15:38:08 Okay. And below it, I'm not going to go  
15:38:12 through each one. I just want to gain a general  
15:38:15 understanding of what these terms mean.

15:38:17 "6/1/2006 Results Right." That means that  
15:38:20 the ad appeared on the right-hand side of the search  
15:38:24 results page --

15:38:25 A True.

15:38:26 Q -- is that correct?

15:38:26 A Yeah.

15:38:27 Q Okay. And on the next one, it says "Browse  
15:38:31 Right"; what does that mean?

15:38:35 A Those are the browse pages of most viewed or  
15:38:38 most discussed videos.

15:38:39 Q Okay. And then "Channels Top," what does

HURLEY

15:38:46 that mean?

15:38:48 A I believe that's your own YouTube channel  
15:38:51 when you create your account. That's sort of like  
15:38:55 similar to your profile on other sites.

15:38:57 Q Okay. How about "Members Top"? What does  
15:39:00 that mean?

15:39:01 A I'm not sure what that means.

15:39:07 Q How about "Groups Top"?

15:39:09 A I assume that's just the top of the groups  
15:39:13 browse page.

15:39:13 Q How about "Tribal Top"?

15:39:16 A I'm not sure. We did have an ad network  
15:39:22 called Tribal Fusion. I don't know why they had a  
15:39:25 separate unit there, what that means.

15:39:27 Q And the -- without going through this  
15:39:32 document line by line, this is a summary of the  
15:39:37 advertisements that ran on YouTube in June 2006; is  
15:39:44 that correct?

15:39:44 A Yeah.

15:39:44 Q And the data on the right-hand column is  
15:39:48 basically measuring how well the advertisements did in  
15:39:50 terms of what revenue they generated, how much  
15:39:53 attention they got, that sort of thing; right?

15:39:55 MR. INGBER: Objection; vague.

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HURLEY

15:39:56 THE WITNESS: Yeah, it shows clicks and  
15:39:58 earnings.

15:39:59 MR. VERRILLI: Okay.

15:40:00 Q And what this -- one of the things that this  
15:40:03 document tells us is that in June 2006, YouTube was  
15:40:07 running ads on the watch pages; right?

15:40:12 A Yes.

15:40:12 Q And that in June 2006, it was running ads on  
15:40:16 the results pages; correct?

15:40:18 A Yes.

15:40:18 Q And in June 2006, it was running ads on the  
15:40:22 browse pages; correct?

15:40:23 A Yes.

15:40:23 Q And in June 2006, it was running  
15:40:27 advertisements on the channels pages; correct?

15:40:29 A Correct.

15:40:30 Q And in June 2006, it was running ads on the  
15:40:33 members pages; correct?

15:40:36 A Yeah, whatever those members' names are, yes.

15:40:41 Q Okay. And so any of the pages listed in this  
15:40:43 document, it is a page on which advertising ran on  
15:40:49 YouTube in June 2006; correct?

15:40:53 A Yes.

15:40:53 Q Okay. And I don't know if I asked you about

HURLEY

15:40:56 this one. I'm sorry.

15:40:57 "6/1/2006 Home Right," what does that mean?

15:41:03 A I assume it's the home page.

15:41:05 Q Okay. So the right-hand side of the home

15:41:08 page, is that what that would mean?

15:41:11 A Yeah, I can't be sure.

15:41:15 Q Well, you wrote the document; didn't you?

15:41:18 A This is a dump that Alex would dump out of, I  
15:41:22 believe, double click. So this is a spreadsheet that  
15:41:26 he created. I created the -- the -- the top  
15:41:31 spreadsheet.

15:41:35 Q Okay. Let me mark this as exhibit....

15:42:02 (Document marked Hurley Exhibit 16  
15:42:03 for identification.)

15:42:27 MR. VERRILLI: Q. I'm just going to ask you  
15:42:37 a question about the first page, but you should feel  
15:42:39 free to take all the time you want to look at the  
15:42:42 document.

15:43:42 A Okay.

15:43:43 Q Okay. Exhibit 16 is -- the first page of it  
15:43:55 consists of an e-mail chain, and the first e-mail  
15:44:01 listed is an e-mail from you to Sean Dempsey; right?

15:44:06 A That's right.

15:44:06 Q Who's Sean Dempsey?



1 HURLEY

15:44:09 2 A I believe he's on the corporate development  
15:44:11 3 team at Google.

15:44:15 4 Q Okay. Did you interact with him during the  
15:44:17 5 course of due diligence on the Google acquisition of  
15:44:21 6 YouTube?

15:44:21 7 A Very briefly. We may -- this may be one of  
15:44:25 8 like two e-mails we exchanged.

15:44:27 9 Q Okay. You were involved in that due  
15:44:29 10 diligence process though; correct?

15:44:33 11 A Yes.

15:44:33 12 Q Okay. And it's CCed to Storm Duncan;  
15:44:38 13 correct?

15:44:38 14 A Uh-huh.

15:44:38 15 Q And who's he?

15:44:40 16 A I don't recall who Storm is, but he looks  
15:44:42 17 like a banker from Credit Suisse.

15:44:47 18 Q Okay. And in this message to Sean Dempsey,  
15:44:51 19 you were answering some questions that he posed to  
15:44:53 20 you; correct?

15:44:56 21 A Yes.

15:44:56 22 Q And item number three in your answer says  
15:44:59 23 "Yes, we are running ROS ads on both the search, watch  
15:45:03 24 and browse pages." That's what it says; right?

15:45:06 25 A That's what it says.

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805 Third Avenue, New York, New York 10022 (212) 705-8585

1 HURLEY

15:45:07 2 Q What's "ROS" stand for?

15:45:10 3 A Just Run of Site.

15:45:12 4 Q What is a run-of-site ad?

15:45:17 5 A Jeez, I don't know the specific definition.

15:45:45 6 Yeah, I don't know the specific definition.

15:45:48 7 Q Did you know it at the time you wrote this  
15:45:50 8 e-mail?

15:45:51 9 A Yeah, I guess if I was --

15:45:55 10 MR. INGBER: Don't guess.

15:45:56 11 THE WITNESS: Well, yeah, I don't recall.

15:46:04 12 MR. VERRILLI: Q. Well, whatever a

15:46:08 13 run-of-site ad is, you're confirming in this e-mail

15:46:11 14 that as of October 2006 those ads were running on the

15:46:15 15 search watch and browse pages; correct?

15:46:17 16 A That's what it says.

15:46:18 17 Q And it would be important for you to be  
15:46:20 18 accurate in conveying this information to Google as  
15:46:23 19 part of the due diligence for this deal; correct?

15:46:26 20 A Yes.

15:46:26 21 Q So it's safe to assume that this was an  
15:46:30 22 accurate statement of what YouTube was, in fact, doing  
15:46:32 23 in October 2006 with respect to run-of-site ads;  
15:46:36 24 correct?

15:46:36 25 MR. INGBER: Objection to form.

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HURLEY

15:46:37 THE WITNESS: Yeah. Again, I don't recall  
15:46:45 specifically, but that's what the e-mail says, so I  
15:46:48 have no reason to believe it's false.

15:46:50 MR. VERRILLI: Q. Well, my question to you  
15:46:52 is whether -- I believe my question to you is -- I  
15:46:55 apologize if I'm confused here -- was whether it was  
15:46:59 important to be accurate in conveying this information  
15:47:04 on Exhibit 16 to Google in the course of this due  
15:47:07 diligence process.

15:47:08 MR. INGBER: Asked and answered.

15:47:11 MR. VERRILLI: Q. And what was the answer?

15:47:12 A Yes.

15:47:23 MR. VERRILLI: Okay. Could we mark this  
15:47:25 document, please, as, I guess, what, 17? Yes, 17.

15:47:35 (Document marked Hurley Exhibit 17  
15:47:37 for identification.)

15:47:37 MR. VERRILLI: Q. We've only got a few  
15:47:38 minutes left on the tape, so after we discuss this  
15:47:41 document, why don't we take a break; okay?

15:47:43 A Sure.

15:50:04 Q You ready?

15:50:06 A Okay.

15:50:06 Q Okay. The cover page of Exhibit 17 is an  
15:50:09 e-mail from Maryrose Dunton to Micah Schaffer and

HURLEY

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2 15:50:15 Heather Gillette; correct?  
3 15:50:17 A That's correct.  
4 15:50:18 Q It's dated January 1st, 2006, -- January  
5 15:50:22 10th, 2006; correct?  
6 15:50:23 A Yes.  
7 15:50:23 Q Okay. It has an attachment to it; correct?  
8 15:50:28 A That's correct.  
9 15:50:28 Q The attachment is titled "YouTube Feature  
10 15:50:33 Description"; correct?  
11 15:50:34 A That's correct.  
12 15:50:35 Q The feature name is "Admin Improvements";  
13 15:50:38 correct?  
14 15:50:38 A Correct.  
15 15:50:38 Q The document lists three innovators; correct?  
16 15:50:44 A Correct.  
17 15:50:44 Q One of them is Brent; correct?  
18 15:50:47 A Yes.  
19 15:50:47 Q That's you; correct?  
20 15:50:48 A Yes.  
21 15:50:48 Q Okay. So you were one of the innovators of  
22 15:50:51 this admin improvements feature; correct?  
23 15:50:54 A Yes, I worked on this feature.  
24 15:50:56 Q Okay. Do you recall doing so?  
25 15:50:59 A Yes. Well, I recur -- I recall working with

HURLEY

15:51:09 lawyer -- with lawyers on this feature.

15:51:11 MR. INGBER: Okay. Don't -- that's fine.

15:51:13 MR. VERRILLI: I didn't ask him anyway.

15:51:15 MR. INGBER: I understand. I want to caution  
15:51:17 him not to reveal any attorney-client communications.

15:51:20 MR. VERRILLI: Okay.

15:51:21 Q The -- you know what, in light of that, I'm  
15:51:24 thinking what I'd like to do is finish my questions on  
15:51:29 this. I don't know if it's going to run over the  
15:51:31 tape, but I would like to finish my questions on this  
15:51:34 document, and then we can take a break; okay?

15:51:37 A Okay.

15:51:37 Q So what I'd like to first direct your  
15:51:39 attention to with respect to this document,  
15:51:44 Mr. Hurley, is the item number one on the page,  
15:51:50 "Screening of Only Flagged/Private Videos"; you see  
15:51:54 that there?

15:51:55 A Yeah.

15:51:55 Q This document indicates that moving forward  
15:52:01 all private videos will be screened; correct?

15:52:05 MR. INGBER: Objection to form.

15:52:06 THE WITNESS: That's what the document says.

15:52:15 MR. VERRILLI: Q. And that was the policy  
15:52:16 going forward as of the time this document was

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HURLEY

15:52:18 created; right?

15:52:20 MR. INGBER: Objection to form.

15:52:21 THE WITNESS: Again, I didn't create this

15:52:25 document. I contributed to these features, but I

15:52:31 don't recall specifically. Again, I had moved on to

15:52:33 other things. This was sort of my last project that I

15:52:38 was working on until I like really transitioned over

15:52:42 to finance and operation duties. So I don't recall

15:52:49 the specific policy going forward or....

15:52:56 MR. VERRILLI: Q. It does indicate that all

15:53:00 private videos will be screened; right?

15:53:06 A It says "Moving forward, only flagged and

15:53:08 private videos will be reviewed."

15:53:10 Q And then the last of the bullets there under

15:53:13 point one indicates that all private videos will be

15:53:17 screened; right?

15:53:23 MR. INGBER: Objection to form. The document

15:53:25 speaks for itself.

15:53:29 THE WITNESS: Break out admin into three tabs

15:53:31 with videos filtered. Private videos is one of those.

15:53:36 MR. VERRILLI: Q. So does this mean that any

15:53:38 video that was uploaded as a private video would

15:53:43 automatically be routed to admin for review?

15:53:47 MR. INGBER: Objection; lacks foundation.

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HURLEY

15:53:54 THE WITNESS: Again, I don't recall. I  
15:53:56 wasn't involved with the daily admin tool at this  
15:54:00 point.

15:54:00 MR. VERRILLI: Q. Well, is listing you as an  
15:54:04 innovator another embellishment?

15:54:06 MR. INGBER: Objection; argumentative.

15:54:09 THE WITNESS: Again, I -- I contributed to  
15:54:10 this, but I didn't actually implement it.

15:54:12 MR. VERRILLI: Q. Well, did you contribute  
15:54:14 to the decision that all private videos would be  
15:54:16 screened?

15:54:17 MR. INGBER: Objection.

15:54:17 And I'll allow you to answer only to the  
15:54:22 extent you're not revealing privileged attorney-client  
15:54:35 communications.

15:54:37 THE WITNESS: I don't recall specifically  
15:54:38 what I added. I just know that I worked on this  
15:54:42 project primarily with our lawyers, but as far as  
15:54:51 specific things, and again, I wasn't an engineer, I'm  
15:54:57 not really a product person, I just had been reviewing  
15:54:59 the videos in the early days. So my input was helpful  
15:55:05 to try to come up with these tools.

15:55:08 MR. VERRILLI: Q. And you don't have any  
15:55:11 reason to doubt that all private videos were, in fact,

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HURLEY

15:55:14 screened after this feature was implemented; do you?

15:55:16 MR. INGBER: Objection; lacks foundation.

15:55:18 You can answer.

15:55:19 THE WITNESS: Again, I don't recall

15:55:24 specifically, but I don't have any reason to believe

15:55:27 that -- that it wasn't.

15:55:30 MR. VERRILLI: Q. Well, to your knowledge,

15:55:33 were the other elements of the changes in practice

15:55:40 identified in this document actually implemented?

15:55:44 MR. INGBER: Objection to form.

15:56:13 THE WITNESS: I can't recall specifically. I

15:56:20 know you have to confirm your e-mail address, so I

15:56:23 can -- I know that is a feature that's on the site

15:56:25 now.

15:56:27 I don't ever recall having an e-mail alert

15:56:30 for flagged at YouTube, so I can't recall, so I can't

15:56:38 really give specifics on all this stuff. Again,

15:56:41 because I wasn't directly --

15:56:41 MR. VERRILLI: Q. And --

15:56:44 THE WITNESS: -- involved in the day-to-day.

15:56:45 MR. VERRILLI: Q. Sorry. I didn't mean to

15:56:47 interrupt you.

15:56:47 Under "Scope," the first item is "Screening

15:56:50 of Only Flagged/Private Video"; do you see that?



HURLEY

15:56:54 A I see that.

15:56:55 Q Okay. So is one of the changes that this  
15:57:01 feature described in this exhibit bringing about is an  
15:57:10 end to the review on a proactive basis of all of  
15:57:15 the -- of thumbnails of all of the videos that are  
15:57:19 being uploaded to YouTube?

15:57:21 MR. INGBER: Objection to form.

15:57:24 THE WITNESS: It's -- I don't recall the  
15:57:41 specific timetable, but I believe we stopped reviewing  
15:57:44 all videos earlier around that Thanksgiving time  
15:57:49 period because it was -- it was impossible to do, so  
15:57:57 that's why we were creating these tools.

15:58:01 MR. VERRILLI: Q. Well, was the decision to  
15:58:08 stop reviewing all videos based on the advice that  
15:58:14 your lawyers gave you?

15:58:18 MR. INGBER: Objection; that question in  
15:58:21 itself may call for the disclosure of privileged  
15:58:26 attorney-client communications. So I'm going to  
15:58:29 instruct the witness not to answer.

15:58:30 MR. VERRILLI: Okay. I'm not trying to be  
15:58:32 difficult about this. We have an issue about advice  
15:58:34 of counsel.

15:58:35 MR. INGBER: I understand.

15:58:35 MR. VERRILLI: I'm going to make a record,

HURLEY

15:58:38 okay, and you can instruct the witness not to answer,  
15:58:40 and it will be fine.

15:58:41 Q So what I'm trying to get at here,  
15:58:43 Mr. Hurley, is whether you relied on the advice of  
15:58:47 counsel in shaping the policies set forth in this  
15:58:51 document?

15:58:52 MR. INGBER: Is that a question?

15:58:55 MR. VERRILLI: Yes.

15:58:55 MR. INGBER: Okay. I instruct you not to  
15:58:58 answer to the extent that it will reveal privileged  
15:59:01 attorney-client communications.

15:59:09 Actually, strike that. I instruct you not to  
15:59:12 answer the question on the ground that it will reveal  
15:59:14 attorney-client communications.

15:59:16 MR. VERRILLI: Okay.

15:59:20 Q Tell me the names of the attorneys with whom  
15:59:23 you were conferring during the process that led up to  
15:59:27 these policy changes?

15:59:30 A Brian Knapp and Kathy Kirkman.

15:59:34 Q And were they lawyers at the Wilson, Sonsini  
15:59:37 firm?

15:59:37 A Yes.

15:59:37 Q Okay. Anyone else?

15:59:40 A Not that I recall.

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HURLEY

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15:59:42 Q Did YouTube have an in-house lawyer at this

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15:59:44 time?

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15:59:47 A I'm not sure.

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15:59:54 THE VIDEOGRAPHER: We're really getting low

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15:59:55 on tape now.

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15:59:58 MR. VERRILLI: Okay. Let's take our break

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16:00:00 now.

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16:00:00 THE VIDEOGRAPHER: This is the end of

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16:00:01 videotape number two in the deposition of Brent Hurley

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16:00:04 on August 26th, 2008.

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16:00:07 The time is 3:59 p.m. -- :54 p.m.

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16:00:12 We're off the record.

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16:00:13 (Recess taken.)

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16:23:51 THE VIDEOGRAPHER: This is the beginning of

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16:23:53 videotape number three in the deposition of

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16:23:57 Brent Hurley on August 26th, 2008. The time is

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16:24:00 4:23 p.m.

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16:24:01 We are back on the record.

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16:24:04 MR. VERRILLI: Q. Mr. Hurley, before the

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16:24:06 break, we were talking about Exhibit 17. Could you

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16:24:11 take another look at that?

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16:24:12 A Sure.

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16:24:12 Q This was the YouTube feature description.

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16:24:21 A Yes.

HURLEY

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2 16:57:33 please. So just to remind you, Exhibit 3 is an e-mail  
3 16:57:59 from you to Jawed Karim dated November 22nd, 2005,  
4 16:58:05 correct?

5 16:58:05 A Correct.

6 16:58:05 Q You're responding to an e-mail that Mr. Karim  
7 16:58:09 sent to you on November 22nd asking you why YouTube  
8 16:58:14 got rid of the copyright flagging; correct?

9 16:58:16 A Yes.

10 16:58:16 Q Now, it's true, isn't it, that YouTube for a  
11 16:58:19 time had a copyright flagging feature; correct?

12 16:58:22 A Yes.

13 16:58:22 Q Okay. Explain to me how that feature worked  
14 16:58:25 when it was in operation?

15 16:58:31 A As you see in this e-mail, it shows there are  
16 16:58:35 a number of things you could flag a video for on being  
17 16:58:40 feature this to promote, try to get your video on the  
18 16:58:46 front page inappropriate, miscategorized and  
19 16:58:51 copyright.

20 16:58:54 Q So explain to me, please, how the feature  
21 16:58:58 worked.

22 16:58:58 A Although there are these different buckets,  
23 16:59:01 they just were flagged and -- and put into the queue.

24 16:59:05 Q So while this feature was operative, if a  
25 16:59:09 YouTube user flagged a video for copyright, then it

HURLEY

16:59:13 would go into the queue; correct?

16:59:16 A Yeah.

16:59:17 Q And it would be reviewed to determine whether

16:59:19 it was likely to be an unauthorized upload of

16:59:22 copyrighted work; correct?

16:59:31 A Yeah, I think that was the thinking at the

16:59:37 time.

16:59:38 Q You used the word "yeah" when you started

16:59:42 that answer. You meant "yes"?

16:59:45 A Yes.

16:59:45 Q Okay. And then there came a point where

16:59:50 YouTube made a policy decision to remove the copyright

16:59:55 flagging feature; correct?

16:59:58 A Yes.

16:59:58 Q So when you had the feature, you were

17:00:04 reviewing videos, "you" meaning YouTube -- let me --

17:00:09 let me start over so we don't have any lack of

17:00:11 clarity.

17:00:11 When the feature was in place, YouTube was

17:00:14 reviewing videos to determine whether they were likely

17:00:18 to be unauthorized uploads of copyrighted works;

17:00:23 correct?

17:00:25 MR. INGBER: Hold on.

17:00:40 Objection to the form of the question to the

HURLEY

17:00:42 extent it mischaracterizes the witness's testimony.

17:00:44 MR. VERRILLI: You can answer the question.

17:00:48 THE WITNESS: Could you repeat the question,

17:00:49 please?

17:00:49 MR. VERRILLI: Could you read it back,

17:00:50 please.

17:01:10 (Whereupon, record read by the Reporter as

17:01:10 follows:

16:59:58 "Question: So when you had the feature, you

17:00:04 were reviewing videos, "you" meaning YouTube

17:00:08 -- let me -- let me start over so we don't

17:00:10 have any lack of clarity.

17:00:11 "When the feature was in place, YouTube was

17:00:14 reviewing videos to determine whether they

17:00:18 were likely to be unauthorized uploads of

17:00:22 copyrighted works; correct?")

17:01:12 THE WITNESS: So again, this e-mail was dated

17:01:25 November 22nd. I think the subsequent e-mail was like

17:01:30 two days later where we stopped reviewing all the

17:01:35 thumbnails of the videos being uploaded. At this

17:01:39 time, we had received notices from content owners

17:01:43 asking us to remove things from the site. So, you

17:01:48 know, we were trying to address the problem and create

17:01:51 different features to -- to again address this

HURLEY

17:01:55 problem. One of these was that this copyright flag  
17:02:01 that we had but then quickly realized that it was  
17:02:06 completely ineffective, there was -- people could flag  
17:02:13 things that they, you know, weren't the copyright  
17:02:15 owner. They might be upset with one of their friends  
17:02:21 and flag a video.

17:02:23               There was just a whole host of things, and we  
17:02:25 were in no position to know who -- if -- if the  
17:02:32 content was -- was authorized and also whoever was  
17:02:36 flagging the video, if they were authorized to make  
17:02:39 the judgment call to have it removed or request to  
17:02:42 have it removed.

17:02:44           MR. VERRILLI: Q. Well, the user who flagged  
17:02:47 it didn't make a judgment call to remove it; correct?

17:02:49           MR. INGBER: Objection; calls for  
17:02:51 speculation.

17:02:54           MR. VERRILLI: Q. Let me rephrase it.

17:02:55           A    Yeah.

17:02:55           Q    YouTube made the decision whether to remove  
17:02:57 the flagged videos, not the user; correct?

17:03:01           A    Remove this copyright flag?

17:03:03           Q    Any flagged video. YouTube made the decision  
17:03:06 to remove a flagged video, not the user; correct?

17:03:10           MR. INGBER: Objection; argumentative.

HURLEY

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2 17:03:11 THE WITNESS: After a video is flagged, we  
3 17:03:16 review it to, you know, use our best efforts to -- to  
4 17:03:19 see if the video violates the terms of use, and then  
5 17:03:23 yes, we remove it from the site.

6 17:03:25 MR. VERRILLI: Right.

7 17:03:25 Q The flagging by the user does not  
8 17:03:27 automatically result in the removal?

9 17:03:29 A No.

10 17:03:30 Q The removal occurs when YouTube makes a  
11 17:03:33 judgment that the video should be removed; correct?

12 17:03:37 A That is correct.

13 17:03:37 Q And for --

14 17:03:38 A And I'd just like to add that, you know,  
15 17:03:41 things like porn are -- are easy to sort of see that  
16 17:03:44 they violated the terms of use. You look at the  
17 17:03:47 video, you know all the information you need is  
18 17:03:49 contained in that video, so we can remove those in  
19 17:03:56 confidence that they are, in fact, violations of the  
20 17:03:58 Terms of Use.

21 17:04:01 Again, other pieces of content which may be  
22 17:04:04 unauthorized, we have no way of knowing if, in fact,  
23 17:04:09 the content owner did authorize and did see the site  
24 17:04:13 with their videos.

25 17:04:15 One example that's pointed to a lot is the



HURLEY

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2 17:30:45 THE WITNESS: Yeah. So my understanding of  
3 17:30:47 an MD5 hash, it's a unique thumbprint of the video  
4 17:30:52 file, but the exact video file needs to be uploaded to  
5 17:30:55 produce a matching fingerprint.

6 17:30:58 So if -- if you took one clip and it was a --  
7 17:31:04 a two-minute clip of this video and we got a notice,  
8 17:31:09 or it was inappropriate and we took it down, if  
9 17:31:13 another user tried to upload it but they had edited,  
10 17:31:16 so it was only one of the two minutes, then it would  
11 17:31:20 be a different thumbprint, so it wouldn't be able to  
12 17:31:24 recognize that.

13 17:31:25 MR. VERRILLI: Right.

14 17:31:26 Q So it was ineffective unless the -- unless  
15 17:31:30 the subsequent upload was exactly identical to the  
16 17:31:34 clip that had been taken down; correct?

17 17:31:36 MR. INGBER: Objection to form.

18 17:31:41 THE WITNESS: It was the best solution at the  
19 17:31:43 time. And again it was a -- a feature that we  
20 17:31:46 introduced that, to my knowledge, no other video site  
21 17:31:49 had introduced showing that we were actively trying to  
22 17:31:55 address this, this issue.

23 17:31:57 MR. VERRILLI: Q. Well, if you had gotten an  
24 17:31:59 MD5 hash of an entire episode of a television show,  
25 17:32:04 then any clip that was uploaded that matched any part

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HURLEY

17:32:10 of the television show would have been blocked;

17:32:13 wouldn't it?

17:32:14 THE WITNESS: No.

17:32:14 MR. INGBER: Objection to form.

17:32:15 THE WITNESS: That's exactly what I said

17:32:17 wouldn't happen. That's what I was outlining the

17:32:20 fundamental limitations of this MD5 hash, that it

17:32:24 needed to be the exact same video.

17:32:28 MR. VERRILLI: Q. So it didn't really block

17:32:30 very many uploads; did it?

17:32:35 MR. INGBER: Objection; vague.

17:32:36 THE WITNESS: Yeah, I -- I don't have that

17:32:38 information, but again, it was a best tool that we had

17:32:46 at the time. We were trying to rapidly come up

17:32:48 with -- with tools to address this.

17:32:50 MR. VERRILLI: Q. You think that was the

17:32:51 best available technology at the time, to prevent the

17:32:54 unauthorized upload of copyrighted works?

17:32:58 MR. INGBER: Objection to form.

17:33:02 THE WITNESS: To my knowledge.

17:33:02 MR. VERRILLI: Q. You never heard of Audible

17:33:06 Magic at that time?

17:33:09 A I can't recall.

17:33:11 Q Did you ever here of Audible Magic?

1 HURLEY

2 17:35:54 witness, we have to repeat our questions.

3 17:35:56 MR. INGBER: Okay.

4 17:35:57 MR. VERRILLI: I'm sorry for that, but that's

5 17:35:58 just the way it is.

6 17:35:59 MR. INGBER: Just because you're not getting

7 17:36:00 the answers you necessarily want, Don, doesn't make a

8 17:36:04 witness evasive.

9 17:36:05 MR. VERRILLI: Q. So let's continue to

10 17:36:07 discuss the Content Verification Program; okay?

11 17:36:14 A (Witness nods head.)

12 17:36:14 Q That program was designed to have two phases;

13 17:36:21 right?

14 17:36:27 A I don't -- I don't recall specifically. I

15 17:36:30 know we were adding new features just like we're

16 17:36:34 adding new features to the site. Just like rapidly

17 17:36:38 throughout the entire life of the company.

18 17:36:40 Q You designed the program; right?

19 17:36:43 A I -- yeah, I -- I had the lead working with

20 17:36:47 our lawyers and also other product people at the -- at

21 17:36:51 YouTube.

22 17:36:52 MR. VERRILLI: Okay. Can we mark this,

23 17:36:53 please, as an exhibit?

24 17:36:53 (Document marked Hurley Exhibit 20

25 17:37:10 for identification.)

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HURLEY

17:37:10 MR. INGBER: Thank you.

17:37:11 MR. VERRILLI: Q. Let me know when you're  
17:37:14 ready, Mr. Hurley.

17:38:07 A Okay.

17:38:07 Q You ready?

17:38:08 A Yeah.

17:38:10 Q The first page of this document is an e-mail  
17:38:13 from you to Maryrose Dunton; correct?

17:38:18 A Correct.

17:38:18 Q And it's dated March 1st, 2006; correct?

17:38:22 A That's correct.

17:38:22 Q And it was forwarding an attachment; correct?

17:38:27 A That's correct.

17:38:28 Q And the attachment describes something called  
17:38:31 a "Content Mgmt System Program Spec"; right?

17:38:34 A That's correct.

17:38:35 Q And is this document describing the Content  
17:38:41 Verification Program?

17:38:45 A This was a spec sheet, so this was an outline  
17:38:50 of what we envisioned it might become, but it wasn't  
17:38:54 that the program actually, I believe, launched.

17:38:58 So it wasn't a -- it wasn't a rundown of what  
17:39:01 we had created. It was a -- this is what we, you  
17:39:05 know, would like to create.

HURLEY

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17:39:07 Q Do you remember how long after you sent this  
17:39:11 document to Ms. Dunton you actually launched the  
17:39:14 program?

17:39:16 A I don't recall specifically. I believe that  
17:39:21 it would be rolled out there. There are a number of  
17:39:23 features listed here, so I don't think it's one day we  
17:39:27 turned everything on. It was probably over a series  
17:39:29 of pushes.

17:39:32 Q Well, when did you start pushing the features  
17:39:37 out?

17:39:38 A This -- this is at a time where I was  
17:39:42 transitioning again over to the finance and operation  
17:39:47 roles. This was sort of my last project with the  
17:39:51 reviewing of videos. So I worked on the spec sheet in  
17:39:56 conjunction with -- with counsel, but then I sort of  
17:40:02 dropped off, and -- and then the actual product people  
17:40:06 and engineers then executed and actually created this,  
17:40:11 but by that -- by that time I rolled off onto other  
17:40:15 duties.

17:40:16 Q So you're not aware that you launched the  
17:40:20 Content Verification Program approximately ten days  
17:40:24 after this e-mail was sent?

17:40:25 A I don't recall.

17:40:29 Q This was a program that you were in charge

HURLEY

17:40:30 of?

17:40:31 A Again, it wasn't -- there's a distinction. I  
17:40:34 helped brainstorm about these tools and -- and things  
17:40:38 that we could do. Again, there -- there weren't any  
17:40:41 other video sites that were employing these things, so  
17:40:44 I was -- I was -- I was looking at other sites like  
17:40:48 eBay. You can see the URLs that reference eBay's sort  
17:40:53 of similar program that I was looking at.

17:40:56 But again, I wasn't the -- the "product  
17:40:59 manager" for this. I had been transitioning over, so  
17:41:04 this is -- these are the -- the brainstorming of these  
17:41:08 tools that I interjected and passed over to folks like  
17:41:13 Maryrose and then the other engineers to actually  
17:41:14 implement.

17:41:15 Q Who -- who was the project manager?

17:41:17 A I believe it was Maryrose.

17:41:19 Q And do you know which engineers worked with  
17:41:22 her?

17:41:22 A I don't recall, no.

17:41:25 Q Okay. So in Phase I of this plan that you  
17:41:30 came up with, you notice the last bullet says "Ability  
17:41:35 to save searches and have newly added video results  
17:41:42 emailed to you on a user-defined frequency"; do you  
17:41:44 see that?

HURLEY

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2 17:41:45 A Yes.

3 17:41:45 Q Can you describe to me what that feature was  
4 17:41:47 intended to be?

5 17:41:48 MR. INGBER: Hold on a second. I just want  
6 17:41:50 to caution the witness that to the extent your  
7 17:41:53 testimony will reveal privileged attorney-client  
8 17:41:56 communications, don't answer, but otherwise you can go  
9 17:41:58 ahead and answer.

10 17:41:59 THE WITNESS: Again, this was a feature  
11 17:42:05 directed primarily at the content owners making it  
12 17:42:08 easier for them to monitor their content so it  
13 17:42:13 would -- they could define at their direction what --  
14 17:42:18 what keywords that they would like to save as sort of  
15 17:42:22 a predefined search, and then could e-mail to them so  
16 17:42:27 they could just look at -- look at -- they could --  
17 17:42:31 the vision was that they could define the searches,  
18 17:42:35 the frequency that they receive these e-mails so they  
19 17:42:38 could get them daily, weekly, monthly, but it would  
20 17:42:42 be, again, at their direction.

21 17:42:44 Q So I just want to get clarity on how this  
22 17:42:47 worked. I'm going to give you a hypothetical, and you  
23 17:42:49 tell me if this is accurate.

24 17:42:51 A Okay.

25 17:42:52 Q Okay.

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HURLEY

17:42:52           So I'm a content owner, and I am using this  
17:42:59 CVP tool to take down clips of The Daily Show.

17:43:06       A     Okay.

17:43:06       Q     And to -- as part of my effort in the search  
17:43:11 that I have to undergo to find these clips on YouTube  
17:43:14 and get them taken down, I use a keyword search, and I  
17:43:20 search for the key words "Daily Show."

17:43:24           So does this feature then provide that  
17:43:29 whenever a video is subsequently uploaded with the tag  
17:43:35 that includes the words "Daily Show," I can get an  
17:43:40 e-mail telling me that that's happened?

17:43:42           MR. INGBER:  Objection to form.

17:43:43           You can answer it.

17:43:45           THE WITNESS:  I believe that was the -- the  
17:43:48 vision, but I don't believe this was ever a feature  
17:43:54 that ever came to life.

17:43:55           MR. VERRILLI:  Right.

17:43:56       Q     Never happened; correct?

17:43:57       A     Yeah.

17:43:57       Q     Okay.  Do you know why?

17:44:00           MR. INGBER:  Again, don't answer if you're  
17:44:04 going to reveal any communications with counsel.

17:44:06           THE WITNESS:  Again, after submitting these  
17:44:13 suggestions for -- for tools that we could create, I



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17:44:17 dropped off of it, so I didn't actually implement the  
17:44:20 program. So I couldn't say why some features were  
17:44:26 adopted and others were not, because I wasn't actually  
17:44:30 implementing the program myself.

17:44:33 MR. VERRILLI: Q. In your communication with  
17:44:34 Maryrose Dunton about this program that we're  
17:44:37 discussing, did she ever tell you that she hated the  
17:44:40 e-mail feature that we've been discussing?

17:44:44 A I don't recall.

17:44:46 Q Were you aware that, in fact, she hated this  
17:44:49 feature?

17:44:50 A I don't recall.

17:44:52 Q So it's possible she did tell you?

17:44:54 MR. INGBER: Objection; asked and answered.

17:44:57 THE WITNESS: No, I don't recall receiving.

17:45:03 MR. VERRILLI: Q. Were you aware that she  
17:45:06 referred to the content owners who would benefit to  
17:45:10 this e-mail fingers as "A-holes."

17:45:15 MR. INGBER: Objection.

17:45:15 THE WITNESS: No, I'm not aware of that. I  
17:45:20 don't recall that.

17:45:20 MR. VERRILLI: Q. Were you aware that she  
17:45:23 did not want to do anything to help the content owners  
17:45:25 she referred to as "A-holes"?

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17:45:25 MR. INGBER: Objection to form. I don't know  
17:45:27 what you're talking about, but to the extent it  
17:45:30 mischaracterizes a document or testimony --

17:45:35 MR. VERRILLI: You really don't want me to  
17:45:36 pull out this document; do you? I mean, you know, you  
17:45:40 had World War III last week about it.

17:45:44 MR. INGBER: I'm not going to tell you how to  
17:45:46 conduct your deposition, but you're asking questions  
17:45:50 and apparently referring to testimony or a document,  
17:45:53 and so I'm just preserving my objection for the  
17:45:55 record.

17:45:55 MR. VERRILLI: Fine.

17:45:56 Q And all I want to know is whether you were  
17:45:57 aware of these things.

17:45:58 A I don't recall.

17:45:59 Q Were you aware she actively discouraged  
17:46:02 rolling out this e-mail feature behind your back?

17:46:05 MR. INGBER: Objection to form.

17:46:06 THE WITNESS: No, I don't recall.

17:46:07 MR. VERRILLI: Q. Were you aware that  
17:46:12 Matt Rizzo also actively opposed rolling out this  
17:46:16 e-mail feature?

17:46:17 MR. INGBER: Objection.

17:46:17 THE WITNESS: No, I don't recall. Again, I

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17:46:19 wasn't -- I wasn't implementing these suggestions.

17:46:24 MR. VERRILLI: Q. Were you aware that

17:46:25 Maryrose Dunton and Matt Rizzo agreed together to try

17:46:31 to delay the rollout of this e-mail feature?

17:46:34 MR. INGBER: Objection.

17:46:35 THE WITNESS: Again, I -- I don't know,

17:46:38 because I wasn't implementing these suggestions. I

17:46:42 don't know why some were implemented and others were

17:46:45 not.

17:46:45 MR. VERRILLI: Q. How many employees were

17:46:46 there at YouTube during this March 2006 time frame?

17:47:01 A I don't recall specifically, but if I had --

17:47:03 I would -- I would say probably around 30.

17:47:06 Q Okay. And Matt Rizzo was one of them?

17:47:10 A I can't recall specifically when he was

17:47:12 hired.

17:47:13 Q You know who he is?

17:47:14 A Yes.

17:47:15 Q And he's -- he was an employee of YouTube?

17:47:17 A Yes.

17:47:17 Q He still is an employee of YouTube?

17:47:20 A Yes.

17:47:20 Q He's an engineer?

17:47:22 A Yes.

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17:47:22 Q Okay. Were you aware that he referred to the  
17:47:26 content owners who would benefit from this e-mail  
17:47:30 system as "assholes"?

17:47:33 MR. INGBER: Objection to form.

17:47:33 THE WITNESS: No, I'm not aware.

17:47:35 MR. VERRILLI: Q. Were you aware that  
17:47:36 Maryrose Dunton and Matt Rizzo agreed to go to Chad  
17:47:41 Hurley and tell him that YouTube should not implement  
17:47:46 this e-mail feature?

17:47:48 MR. INGBER: Same objection to the extent  
17:47:51 you're mischaracterizing documents in this case.

17:47:55 THE WITNESS: Yeah. Again, I can't recall.  
17:47:58 I wasn't -- I wasn't part of those conversations, so I  
17:48:02 don't --

17:48:02 MR. VERRILLI: Q. Well, did your brother  
17:48:03 Chad ever come to you and ask you about this e-mail  
17:48:07 notification system?

17:48:10 A I don't recall.

17:48:10 Q Okay. Now, in this -- back to the document.  
17:48:17 There's Phase II here described.

17:48:20 A Uh-huh.

17:48:21 Q The first bullet point says "Voluntary  
17:48:26 monitoring and removal by YouTube by potentially  
17:48:30 infringing videos"; do you see that?